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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,776	01/25/2006	Aline Abergel	283012US26PCT	7594

22850 7590 09/16/2008  
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.  
1940 DUKE STREET  
ALEXANDRIA, VA 22314

EXAMINER
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ACKUN, JACOB K

ART UNIT	PAPER NUMBER
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3728

NOTIFICATION DATE	DELIVERY MODE
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09/16/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/565,776	<b>Applicant(s)</b> ABERGEL, ALINE	
	<b>Examiner</b> Jacob K. Ackun Jr.	<b>Art Unit</b> 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 17-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 30-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 30 continues to be drafted so that it can be interpreted in two ways, to wit, the counterpart authentication element is claimed and the counterpart authentication element is not claimed. Note the comments in the last office action. The distinction is important. For example, if the counterpart authentication element is not claimed, the claim requires of prior art only the capability of reacting with some counterpart element in order to meet the claim.
3. Claims 17-40 are rejected under 35 U.S.C. 102(b or e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Perlman et al., Krumhar et al., or Kurrle. The rejection is set out in the prior office action and is incorporated herein in its entirety by reference.
4. Applicant's arguments filed 5/16/08 have been fully considered but they are not persuasive. Applicants argue that the claimed invention is not shown by or obvious over the applied references. The examiner disagrees. Specific reference may be had to claim 17, for example, the broadest claim to which applicant

believes applicant is entitled. Each of the applied references clearly teaches a desirability to provide an authentication element for cosmetic packaging (additionally almost all of the prior art of record in this case as well as applicants own disclosure of the prior art teaches that 1) it was desirable prior to the invention of the subject application to protect cosmetic packaging from counterfeiting; 2) it was known prior to the invention of the instant application to do so by providing an authentication element within cosmetic packaging to prevent counterfeiting; 3) even where the prior art does not specifically mention protection of cosmetics by using an authentication element, it was known prior to the invention of the instant application to protect various other products from counterfeiting by using an authentication element incorporated within the product packaging). While these references teach color change for the authentication element, because this happens to be a common form of detectable change, it is noted that the independent claims only require some form of detectable change (compare claim 17 with claim 18), an element that the examiner considers to be even more notorious than color change. Based on the above it should be clear that the incorporation of an authentication element within a package including a cosmetic product therein, a combination that appears to be all that claim 17 encompasses, is a combination that is neither novel nor unobvious.

As to some second chemical reagent present on some counterpart authentication element, as claimed in claim 17, it is first noted that such element is not positively claimed in the claim. Rather it is recited as an intended use of the claimed packaging device. Note the examiners past comments and the responses thereto by applicant. The applied references are all inherently, if not expressly capable of the claimed intended uses. For example, a room having oxygen therein in which the container of Krumhar is opened could be the counterpart authentication element, although as already noted, the claim does not require such an element, only the capability of reacting with such an element. There does not appear to be any argument that the authentication elements of all of the applied prior art are capable of reacting with other elements having the right chemicals. Oxygen, for example. Accordingly, all of the elements of claim 17 appear to be well within the prior art and it is not clear to the examiner why the applicant believes that the claim avoids the prior art of record.

Independent claim 30 appears to have the same scope as independent claim 17, save for the requirement that the composition of the second reagent be chromogenic, in spite of the use of the term kit in line 1 thereof. The fact that color change is prior art has already been addressed.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacob K. Ackun Jr. whose telephone number is (571)272-4418. The examiner can normally be reached on Monday through Friday 8.30AM-5.00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jacob K. Ackun Jr./  
Primary Examiner, Art Unit 3728